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(January 12, 1988)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 83-49

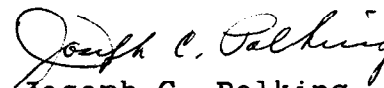
GALIN ATAEI

v.

BARBER BLUE SEA LINE, ET AL.

NOTICE

Notice is given that no exceptions were filed to the December 8, 1987, initial decision in this proceeding and the time within which the Commission could determine to review that decision has expired. No such determination has been made and accordingly, that decision has become administratively final.


Joseph C. Polking
Secretary

{ FEDERAL MARITIME COMMISSION
{ SERVED DECEMBER 8, 1987
{ EXCEPTIONS DUE 12-30-87
{ (REPLIES TO EXCEPTIONS DUE 1-21-88)

FEDERAL MARITIME COMMISSION

NO. 83-49

GALIN ATAEI

v.

BARBER BLUE SEA LINE, ET AL.

1. Where a Complainant brings an action before the Federal Maritime Commission alleging Shipping Act violations, and where said Complainant also brings an action in a Federal District Court which litigates and determines those matters necessary to the resolution of the Commission case, the parties are collaterally estopped from relitigating those same matters and the District Court holding, when final, is binding on both of them.
2. Where the District Court decides facts and the merits of issues raised by the Complainant which would also govern the holding in the action brought before the Federal Maritime Commission, the Complainant is collaterally estopped from proceeding in the Commission case where the facts and issues were determined against said Complainant. Further, under such circumstances, any claim for reparations is barred.

David M. Salentine and Caspar Ewig for Complainant, Galin Ataei.
M. E. DeOrchis, Sr., and Kelly Knight for Respondents Barber Blue
Sea Line, et al.

INITIAL DECISION¹ OF JOSEPH N. INGOLIA, ADMINISTRATIVE LAW JUDGE

¹ This decision will become the decision of the Commission in the absence of review thereof by the Commission (Rule 227, Rules of Practice and Procedure, 46 CFR 502.227).

Preliminary Matters

On October 5, 1983, the Complainant, Galin Ataei, an individual, filed a complaint against the Respondents, Barber Blue Sea Line, Barber Lines A/S, Blue Funnel Lines and The Swedish East Asia Company, Ltd. The complaint alleges that on or about September 8, 1980, the Respondents received from Sabel Exhibition Persian Carpets at Bahrain a quantity of cargo for shipment from Bahrain to the Complainant at San Jose, California, via Los Angeles, and that the carriage was prepaid by the shipper and the bill of lading was so marked. The complaint further alleges that as a result of a series of circumstances, primarily involving the disputed ownership of 18 Persian rugs, the cargo was not delivered to her on or before October 13, 1980, as it otherwise would have been, and that she brought suit against the Respondents and others in Yokohama, Japan, as well as in the United States District Court for the Southern District of New York. The complaint alleges that the cargo remained in the custody of the Respondents at Yokohama and that through her counsel the Complainant has requested the Respondents to finally complete the contract of carriage. According to the complaint, the Respondents refused to deliver the cargo unless they were paid a total of \$65,514.08, consisting of various fees. It alleges that none of the fees are contained in the Respondents' tariffs and that the Respondents' acts violate section 18(b)(1) of the Shipping Act, 1916 (failure to have a tariff open to public inspection), which allegation has since been withdrawn, section 16 First of the Act (subjecting the Complainant to undue and unreasonable prejudice and disadvantage), section 17 of the Act (failure to establish, observe, and enforce just and reasonable regulations and practices related to or connected with the handling,

storing, or delivery of complainant's property), section 18(b)(3) of the Act (charging and demanding, etc., a different rate or charge than those specified in the tariff), section 14, Fourth of the Act (in that the Respondents' claim for legal fees constituted unfair treatment and unjust discrimination). Finally, the complaint asks for reparations; that the Commission order the Respondents to cease and desist; and that the Commission request that Respondents' vessels be refused the right of entry into any port of the United States until it determines the violations had ceased. On November 2, 1983, an amended complaint was filed wherein the Complainant refers to an Order to Show Cause filed in the New York action in which the Respondents seek to sell the cargo in satisfaction of their lien for various costs incurred. The complaint alleges the Order to Show Cause "constitutes a new and separate violations of sections 16 First, 17, 18(b)(3), and 14 Fourth of the Shipping Act, 1916"

On December 5, 1983, the Respondents filed an Answer to Amended Complaint. In it they deny any wrongdoing, noting that a Bahrain court found that Mr. Kamrea Ataei had fraudulently obtained the Persian rugs from his employer, Mr. Ishaq; that the rugs were not the property of the Complainant; and alleging that Paragraph 11 of the Bill of Lading, relating to Carriers' Liens, allows the Respondents to take the action that was taken regarding the cargo. As an affirmative defense the Respondents' answer asserts that the complaint should be dismissed because the matter is already before the District Court which has jurisdiction. It further asserts that the carriers' liens "are extraordinary expenses for the care, custody and preservation of the shipment" and are "unique costs, arising out of the special

circumstances here and are not charges required to be filed with the Federal Maritime Commission as part of the carrier's rate schedule."

Beginning on January 9, 1984, the Administrative Law Judge then assigned to the proceeding began to set down procedural schedules. By October 17, 1984, he issued an Order to Show Cause Why Complaint Should Not be Dismissed for Failure to Diligently Prosecute. After several conferences this proceeding was stayed pending the outcome of "the final determination of the civil proceeding" (the New York District Court action). On July 2, 1986, the District Court published its Opinion in the companion case, Galin Ataei v. M/V Barber Tonsberg, et al., 80 Civ. 6374. On September 4, 1986, the case was reassigned within the Federal Maritime Commission to the Administrative Law Judge presently assigned to the proceeding. By Procedural Order served September 9, 1986, the parties were ordered to file status reports which they did, indicating that the Respondents had filed a subsequent Motion for Reconsideration in the District Court action. By Procedural Order served on February 20, 1987, the parties were directed to answer certain questions regarding the nature and finality of the District Court's Opinion, and in response thereto it was noted that the Opinion was not appealed and had become final. Both parties then filed briefs wherein both argued that the District Court's decision allowed each of them to invoke either the doctrines of "Res Judicata" or "Collateral Estoppel" or both in favor of their respective positions.

Findings of Fact

It should be noted preliminarily that in the prehearing conference of November 8, 1984, the Administrative Law Judge stated:²

In addition to discussing the possibility of settlement, the off-the-record discussion also concerned itself with a procedure for the disposition of the case before this agency. Among other things, it was determined by agreement of the parties and with my approval, that this case be stayed because it is in the interest of justice to stay the case, pending the final determination of the civil action.

Now, final determination of the civil action may occur as the result of settlement, and it may occur, if not settled, only after all appellate processes are exhausted. The stay also provides that the record of trial in the civil action will constitute the entire record of the trial here, if it is necessary to hear this case at this agency. (Emphasis supplied.)

1. On July 2, 1986, District Judge Irving Ben Cooper of the United States District Court, Southern District of New York, rendered an Opinion in Galin Ataei v. M/V Barber Tonsberg, et al., 639 F.Supp. 993 (S.D.N.Y., 1986), wherein he decided certain facts which are set forth below in succeeding paragraphs of this portion of the Initial Decision and which are hereby found as facts in this proceeding. (See Complainant's Notice of Decision in Companion Case, filed July 16, 1986.)

2. In the later half of 1980, Mr. Kamran Ataei, residing in Bahrain, sent 107 packages of household goods, including 18 valuable Persian rugs to his mother, plaintiff Galin Ataei, who resided in San Jose, California.

² See pages 16 and 17 of the transcript and the Order Staying Trial Pending Outcome of Civil Proceeding, served November 15, 1984.

3. The goods travelled in a 20 foot container on board defendants' carrier, the M/V Barber Tonsberg, moving from Bahrain to Los Angeles then on to San Jose, pursuant to a straight, non-negotiable bill of lading dated August 9, 1980.

4. The bill of lading did not list the name of the complainant's son, Mr. Kamran Ataei, as shipper but rather the name, "Sabel Exhibition Persian Carpets," which is a store owned by Mr. Mohammed Eshaq. According to the Director of the Bahrain Criminal Investigations, Mr. Ataei was employed by Mr. Eshaq. The Complainant was listed as consignee.

5. The shipment was to arrive in San Jose on or about October 13, 1980.

6. The M/V Barber Tonsberg sailed from Bahrain on September 8, 1980. Approximately ten days later, while en route to its stop in Yokohama, Japan, the carrier (respondent) received a communication from Sabel Exhibition Persian Carpets claiming that the Persian carpets in the container were stolen. The store requested that the container remain on board for delivery back to Bahrain. Subsequent to September 18, 1980, and prior to September 24, 1980, the Bahrain Criminal Investigation Directorate ("CID") orally communicated to the Respondents that the carpets be stopped. The oral notice was confirmed in a letter dated September 24, 1980, which reads (as translated into English from Arabic):

[Mr. Eshaq] has reported to the Police that an employee . . . stole a quantity of valuable Iranian carpets, and shipped the stolen carpets in a container through your agency via M/V Barber Tonsberg. . . .

As the container is connected to a criminal case, you are requested to please stop the shipment and off load at the nearest port, to be returned to Bahrain at the expenses of the complainant who has submitted a legal declaration . . .

certifying that he will be responsible for any civil disputing the ownership of the said property.

7. After receiving the letter quoted in paragraph (6), above, the Respondents contacted Mr. Murad Salek, Esq., a Bahraini attorney, who advised them over the telephone that if they did not comply with the order, they might be subject to criminal prosecution for aiding the offender.

8. The M/V Barber Tonsberg arrived in Japan between September 25-30, 1980, discharged the container in Yokohama and departed on September 30 for Los Angeles where it arrived on October 11, 1980. On October 27, 1980, the carrier (respondent) received a communication from the Bahraini CID informing it that Mr. Ataei (the Complainant's son) had been charged with stealing the rugs and ordering the defendants (the Respondents in this FMC action) to return the container to Bahrain. It states in part:

The Public Prosecutor, Bahrain . . . hereby orders Barber Blue Sea . . . that the . . . container be returned to Bahrain by the first available ship. Failure to comply immediately with this order will render you liable to criminal prosecution in Bahrain.

9. The carrier did not make any move to return the container to Bahrain, and 11 days later, on November 7, 1980, the Complainant (Plaintiff) commenced an action in Yokohama, Japan. On the same date the Japanese court issued an order stating that:

The properties . . . shall not be moved from . . . Yokohama by the obligor other than by shipment of the said properties by ship to Los Angeles, California, U.S.A.

The Complainant posted 1.5 million yen (\$6,000) with the Japanese court to cover the restraint of the container. Two days later the District Court action was begun in New York.

10. During the pendency of the court proceedings maintaining the contents of the container was costly. The carrier paid for surveys of the container, warehouse storage charges and for chemicals inserted into the container to avoid contamination. Further, insurance was arranged to protect the owner in case the rugs were stolen or caught on fire, since the marine insurance which covered the cargo on the vessel was not applicable when the cargo was discharged on shore.

11. On July 30, 1983, the Respondents (Defendants in the District Court action) were advised by Mr. Eshaq that he and Mr. Ataei had resolved their differences and that the container could be forwarded to its California destination. Meanwhile, the Bahraini Court had considered the matter and, after reviewing an auditors report, concluded that cash payments were made to Mr. Ataei by Mr. Eshaq totalling 169,897.410 Bahraini Dinars ("BD") (exchange rate unspecified); that BD 2800.00 in sales proceeds assignable to Mr. Ataei were missing from Mr. Eshaq's store; that Mr. Ataei gave Mr. Eshaq BD 38,400.00 in dishonored checks; and that Mr. Ataei took carpets from the stock in Mr. Eshaq's store in the amount of BD 178,645.00. The Court ordered Mr. Ataei to pay Mr. Eshaq BD 484,624, which included court costs, experts' fees and attorneys' fees. The Bahraini Court did not expressly find Mr. Ataei criminally responsible.

12. The carrier shipped the household goods to Mrs. Ataei on board the M/V Barber Priam for destination Los Angeles. The rugs were not delivered to Mrs. Ataei and were held in escrow pending the outcome of

the District Court proceeding. The carrier claims a lien on the rugs for \$64,318.74 as follows:³

\$46,4342.43	Legal Fees for Bahraini, Japanese and New York
11,250.00	Insurance
2,604.23	Lease of Container
2,072.69	Survey Fees
2,049.39	Storage Fees

When the goods were delivered to Mrs. Ataei, the carrier issued an original freight bill with an annexed schedule detailing the above outstanding costs and expenses incurred in maintaining the goods since September, 1980.

13. The action before the Federal Maritime Commission was begun on October 5, 1983.

14. The plaintiff (Complainant in the FMC action) moved for summary judgment dismissing a counterclaim filed by the defendants (Respondents) on the basis that it violated the Shipping Act of 1916. The court initially "reserved decision" on the motion, but in its decision of July 2, 1986 (p. 12), denied it with prejudice.

15. On July 2, 1986, Judge Irving Ben Cooper of the District Court for the Southern District of New York in Ataei v. Barber Tonsberg, 639 F.Supp. 993 (S.D.N.Y., 1986), decided that:

(a) The costs counterclaimed by the carrier against the Complainant (Plaintiff) for expenses that arose out of the carrier's storage of the Complainant's goods in Japan cannot be categorized as rates bearing on "transportation and

³ The legal fees are broken down as follows: New York--\$30,260.82; Japan--\$22,466.61; Bahrain--\$3,615.00.

services in connection therewith" required to be filed in tariffs and adhered to by the Shipping Act, 1916 (46 U.S.C. sections 801 and 817), citing several cases. Instead, recovery for these expenses is properly covered in paragraphs 8 and 11 of the bill of lading, the contract of carriage which deals with costs incident to the discharge and storage of cargo.

(b) Rule 27(a) of the carrier's tariff is not applicable.

(c) The plaintiff's (Complainant here) claim that costs for insurance are precluded by Rule 25 of the tariff is wrong.

(d) The carrier did not deviate unreasonably from the bill of lading in violation of section 3(2) of COGSA (Carriage of Goods by Sea Act), 46 U.S.C. 1303(2), but rather complied with paragraph 8 of the bill of lading which allowed it to discharge and store the goods when there was a risk of fire or disadvantage to the carrier.

(e) Even if there was a deviation it was reasonable within the meaning of section 4(4) of COGSA, 46 U.S.C. § 1304(4), and the defendants (Respondents in this proceeding) properly cared for the goods over three years' time.

(f) Since the carrier did not unreasonably deviate from its bill of lading, its relevant provisions must be upheld, and under paragraph 9 the defendants (Respondents) are not liable to plaintiff (Complainant) for the three year delay in delivering her goods. Further, since there was no negligence, fault, or failure in the duties and obligations of the defendants, paragraph 9 does not violate section 3(8) of COGSA, or any other provision of that statute.

16. Judge Cooper's decision also held that paragraph 11 of the bill of lading gives the carrier a lien on the shipment for its expenses incurred while fumigating, inspecting, surveying, and for demurrage, surveys, port charges, and legal fees. In that regard he specifically found that:

(a) Under paragraph 11 of the bill of lading the legal fees respecting the Bahraini proceeding constitute a lien against the cargo because the Bahraini government's requests and orders were directed against the shipment as provided in paragraph 11 and not against the carrier.

(b) Under paragraph 11 of the bill of lading attorneys' fees respecting the Japanese and New York proceedings are not a lien against the cargo because the litigation in both countries was against the carrier and not against the cargo, and because the suit was not "brought by authorities or by third parties." Further, the plaintiff (Complainant in this proceeding) was not a "third party" within the meaning of paragraph 11 of the bill of lading.

(c) Under paragraph 8 of the bill of lading the carrier is entitled to a lien on the shipment for insurance costs while storing the cargo in Japan, since had it not insured the goods it would have violated its duty under section 3(2) of the COGSA. Further, the insurance claim is not precluded by Rule 25 of the pertinent tariff which provides that, "no premiums for account of shipper may be absorbed by the carrier . . .," since the tariff provisions were intended to govern the freight for transportation and services in connection therewith and since the unloading of the cargo in Japan does not fall in that category the insurance limitation written into the tariff is inapplicable.

(d) The fee for the leasing of the container was a fee incident to the lawful storage of the goods and the carrier is entitled to a lien on the shipment for costs incurred by the lease.

(e) In accordance with the clear language of paragraph 11 of the bill of lading, the carrier has a lien on the shipment for expenses incurred for survey of the goods.

(f) Under paragraph 8 of the bill of lading the carrier has a lien on the shipment for storage charges incurred in Japan.

(g) The plaintiff (Complainant here) may not recover any damages for delay in delivery.

17. After the July 2, 1986, Opinion was served the Defendants (Respondents in this proceeding) moved to have the District Court reconsider its findings and to allow an award for prejudgment interest. Specifically, they asked that the Court reconsider and reverse its holding that they could not recover for legal fees and costs regarding the New York and Japanese litigation, and for prejudgment interest from November 27, 1983, to September 16, 1986. The District Court denied the

motion as to the legal fees and costs and allowed recovery for prejudgment interest.

18. In response to the Administrative Law Judge's Procedural Order, served February 20, 1987, the Complainant indicated that the appeal period from the District Court Opinion had expired, without any appeal having been made. Further, the response indicates that:

Respondents cannot relitigate the issue of their wrongfully having withheld all of complainant's household goods for three years and their refusal to allow delivery of the 4 bales of rugs, out of a total of 107 packages of goods, for an additional four years beyond that while demanding sums of money which the District Court disallowed."

and that:

. . . the only issues remaining to be litigated herein, are the amount of reparations and attorneys' fees to be awarded in her favor.

19. The Respondents' filing in satisfaction of the Procedural Order served February 20, 1987, indicates that there was no appeal from the District Court Opinions and the time for appeal has expired. The Respondents further assert that:

3. The District Court's decisions are res judicata in the Commission's case and/or collaterally estop Complainant Ataei in this case. The District Court decided substantially the same issues raised here, although in the Amended Complaint they are couched in different language. The Court found that none of the items in issue were "freight" subject to filing in a tariff, and further the Court found:

- a. "Extra expenses" incurred by ocean carrier arising out of defendants' storage of plaintiff's goods in Japan are not required to be included in defendants' tariff.
- b. The ocean carrier's delay in delivery of plaintiff's goods did not amount to a deviation under maritime law.

- c. Even if the ocean carrier deviated, such deviation was not unreasonable.
- d. Defendants are not liable to plaintiff for the three year delay in delivering her goods.
- e. All the expenses incurred by defendants in connections with the discharge and storage of goods in Japan shall be a lien on the goods. Since insurance fees were a necessary expense once the goods were lawfully stored, the defendants have a lien for those costs.
- f. Defendants leasing of the container for storage was a fee incident to the lawful storage of the goods and therefore defendants are entitled to a lien on the shipment for costs incurred by the lease.
- g. Defendants have a lien for expenses incurred for surveys of the goods.
- h. Defendants have a lien for expenses incurred for storage of the goods.
- i. Defendants are entitled to prejudgment interest from November 27, 1983 through date of judgment.
- j. Respondent's Claim for legal fees did not violate any sections of COGSA and did not have to be included in the carrier's tariff. Reviewing paragraph 11 of the Bill of Lading, the District Court stated that paragraph 11 allows the carrier a lien for "legal fees incurred in connection with attachment, seizure, detention, condemnation or other legal proceeding brought against the shipment by authorities or by third parties." (Emphasis added). The District Court awarded respondent's legal fees incurred in Bahraini (Orders by Bahraini government did result in legal proceedings), but denied the legal fees incurred in Japan and New York, because in the court's view, the fees incurred were directly the result of the actions filed by the complainant, who is neither an "authority" nor "third-party." This implies that if the bill of lading language had been broader, all legal fees would have been granted.

20. In their submission discussed in paragraph (17) above, the Respondents assert that the Commission "is bound to pay due respect to the decision of the District Courts" and that:

Complainant's allegations before this Court and the Southern District of New York seek similar relief from the identical facts. Therefore, in addition to the defense of collateral estoppel, the defense of res judicata applies.

21. By Procedural Orders served on April 13, 1987, and June 8, 1987, respectively, the Administrative Law Judge set down a briefing schedule respecting any threshold issues such as jurisdiction, res judicata and/or collateral estoppel. Original and Reply Briefs were filed by the parties. In them the Complainant argues that res judicata applies in her favor while the Respondents argue that collateral estoppel applies in their favor.

Ultimate Findings of Fact

22. All of the Shipping Act issues, except the question of reparations, were decided against the Complainant in the District Court case and would have been dispositive of the issues raised in the instant proceeding brought in the Federal Maritime Commission.

23. A claim for reparations by the Complainant before the Federal Maritime Commission has no basis and is barred where the District Court action exonerates the Respondent of any wrongdoing as to the Complainant and, in fact, allows the Respondent carrier a lien on the Complainant's goods.

24. The holding of the District Court on issues that are dispositive of the Shipping Act claims of the Complainants collaterally estops both parties and those in privity with them as to those matters which were necessarily litigated and determined in the District Court case.

Discussion and Conclusions

Preliminarily, it should be noted that there has been no evidentiary trial in this case so that there are no designated exhibits in the record. However, the Secretary of the Commission has maintained an official, public docket book which contains all relevant documents. Where necessary, as was the case in the Findings of Fact section of this decision, they will be properly identified, albeit not by a specific exhibit number.

As to the actual position of the adverse parties, both, rather surprisingly, rely on the doctrines of res judicata and/or collateral estoppel for the proposition that the other is barred from departing from the holding of the District Court respecting the issues and/or the facts. They do so, apparently in the belief that the District Court decision supports their respective positions. Obviously, that cannot logically be so, and therefore, it is necessary to decide which of them is correct. In doing so, this writer agrees with both parties that the District Court decision either bars any subsequent action on the merits respecting the same claim or demand and/or estops them from relitigating the same facts that were litigated in the District Court action. Having made that rather simplistic and straightforward statement, it now remains to define and mark the legal parameters of the doctrines of res judicata and collateral estoppel, both generally, and as they apply in this proceeding.

At the outset it should be noted that the doctrines of res judicata and collateral estoppel have, and have always had one objective--judicial finality.⁴ The urge to achieve that objective is so strong that a final, valid judgment, even though it may be erroneous, is not subject to collateral attack and until properly set aside, has a binding effect on the parties as res judicata or as collateral estoppel in all the nation's courts, both federal and state.⁵ This is so even though in some cases the application of the doctrine produces a demonstrably incorrect result, such as where some parties appeal and others do not, and where as to the appellants, the judgment is reversed.⁶

As has been noted, both parties here have invoked res judicata and/or collateral estoppel so that the distinctions between the two are not as controlling as they otherwise might have been. Nevertheless, a brief discussion relating to those distinctions is helpful. Traditionally, res judicata deals with the conclusive effect on the cause of action on which it was rendered, and is an absolute bar to a

⁴ Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982). See also Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979); Montana v. United States, 440 U.S. 147 (1979); Cromwell v. County of Sac., 94 U.S. 351 (1877).

⁵ See 28 U.S.C. 1738 which implements and expands the Full Faith and Credit Clause of the Constitution (Article IV, section 1); and Angel v. Billington, 330 U.S. 183 (1946); Kremer Chemical Const., supra; Montana v. United States, supra.

⁶ See Federal Dept. Stores, Inc. v. Moitie, 452 U.S. 394 (1981), where the Supreme Court refused to depart from the rule based on the discretion on the part of the inferior courts to apply it flexibly on principles of equity.

subsequent action between the same parties or those in privity with them, upon the same claim or demand. Parklane Hosiery and Montana v. U.S., supra. Collateral estoppel is that facet of judicial finality that deals with a judgment's conclusive effect in a suit involving another cause of action, in that the prior judgment constitutes an estoppel, between the same parties or those in privity with them, as to matters that were necessarily litigated and determined although the claim and demand in the subsequent action is different. Brown v. Felsen, 442 U.S. 127, 138, n. 10 (1979); Montana v. U.S., supra.⁷ Further, with respect to res judicata it is well settled that res judicata bars both claims that were actually litigated and those that could have been litigated.⁸ Finally, it is important to note that in limiting the doctrine of res judicata to the "claim" or "cause of action," courts have found that defining a "single cause of action" is troublesome. Generally, it has been held that the "cause of action" or "claim," as it is referred to in the Restatement (Second), is bounded by the injury for which relief is demanded, and not by the legal theory on which the person asserting the claim relies. In Kremer v. Chemical Const. Corp., supra, for example, the Supreme Court found that an action in the Federal court for employment discrimination was precluded by a

⁷ The Restatement of Judgments 2d (1980, in Title E, refers to res judicata as "claim preclusion" and to collateral estoppel as "issue preclusion," which terms have been used in more recent decisions.

⁸ See Moitie, Brown v. Felsen, Parklane Hosiery Co., supra, as well as Commissioner v. Gunnen, 333 U.S. 591 (1948); and Cromwell v. County of Sac., 94 U.S. 351 (1877).

judgment in the state court that determined that no such discrimination took place. The Court did so without feeling it necessary to address the issue of whether the doctrine of res judicata as distinct from collateral estoppel applied.⁹

When the above principles are applied to the facts and surrounding circumstances in this proceeding, the ultimate decision is not a difficult one. As has been noted, both the Complainant and the Respondents argue that either res judicata or collateral estoppel applies. In her brief filed on September 21, 1987, the Complainant states at page 2, line 14:

The facts tried to Judge Cooper are the same facts presented here. They are not to be relitigated. Judge Cooper's decision is res judicata before this Commission. Respondents cannot collaterally attack his opinion in this proceeding.

The Respondents in their brief filed on July 31, 1987, after discussing the District Court's findings, state at page 10:

In view of the above findings, it is submitted that the alleged violations of the Shipping Act set forth in paragraphs 22-26 and 28 cannot stand, and the plaintiffs are precluded by collateral estoppel from raising the same issues with respect to the reasonableness of the carrier's actions with respect to the goods in this case. It would be ironic indeed if the carrier's actions which were found to be eminently reasonable in one federal forum are found to be unreasonable and discriminatory in another.

⁹ See also, United States v. Southern Ute Tribe or Band of Indians, 402 U.S. 159 (1971); Lovely v. Laliberte (CCA 1st, 1974), 498 F.2d 1261, cert. den. 419 U.S. 1038 (1974); Thistlethwait v. City of New York (CCA 2nd, 1974), 497 F.2d 339, cert. den. 419 U.S. 1093 (1974).

As to the Complainant's assertion that the District Court's opinion is res judicata, and would thereby preclude any further suit in another forum (claim preclusion), one questions whether or not she really meant collateral estoppel (issue preclusion). This is so because she argues further that various sections of the Shipping Act, 1916, have been violated because, "Judge Cooper's opinion establishes without question that respondents withheld delivery of Mrs. Ataei's goods unless she paid them more than triple the amount Judge Cooper found owing." Such an argument is not one predicated on res judicata but rather on collateral estoppel. Whatever the Complainant means, certainly her position is that the Respondents cannot relitigate the facts and that at the very least collateral estoppel applies.

In essence, the Complainant is arguing that the holding in the District Court case would support a holding that sections 16 First, 17 and 18(b)(3), respectively, of the Shipping Act, have been violated and that at least collateral estoppel, if not res judicata, presents a bar to relitigation of those matters. The Respondents, on the other hand, argue that collateral estoppel applies and that the holdings in the District Court decision support its position that it did not violate any provisions of the Shipping Act, 1916. In its decision the District Court held and it has been found as fact that it held that:

1. None of the amounts claimed by the Respondent carriers for legal fees, insurance costs, storage fees, survey fees, container lease charges are required to be included in the carrier's tariff.
2. Such costs cannot be categorized as rates bearing on "transportation and services in connection therewith."
3. Recovery for such expenses is properly covered in paragraphs 8 and 11 of the bill of lading.

4. Such expenses were incident to the unanticipated discharge and storage of the goods in Japan.
5. The cargo was held up in Japan pending a determination of whether to send it to Los Angeles or to return it to Bahrain as requested by that government.
6. The carrier did not "deviate" from their bill of lading obligation or fail to care for the goods.
7. Though the items were stored in Japan for three years, none of the goods incurred any damage.
8. The defendant (carrier) is not responsible for delay in delivery of the goods.
9. The decision of the carrier with respect to its handling of the goods was eminently reasonable.
10. There was no negligence or fault or failure in the duties and obligations of the carrier with respect to the goods.

In addition to the above the District Court made various findings of fact which have been adopted as findings in this proceeding. Those findings led to holdings on the merits, which not only involved the provisions of the Carriage of Goods by Sea Act, but also provisions of the Shipping Act, 1916. In its deliberations the Court considered dismissing the Respondents' counterclaim on the basis that it violated the Shipping Act, 1916; interpreted the meaning and import of the FMC tariff requirements set down at 46 U.S.C., §§ 801 and 817; interpreted the meaning and import of various provisions of the bill of lading and determined generally that the carrier had acted reasonably in the transport of the cargo.

Given all of the above it is held that the decision of the District Court at the very least constitutes an estoppel as to matters that were necessarily litigated and determined in the District Court proceeding. Further, it is held that issues decided in the District Court proceeding are dispositive of the issues raised in this proceeding so that the

effect of the collateral estoppel is the same as it would have been had res judicata been applied.

The ultimate question remaining for determination is, does the District Court decision support the Complainant or the Respondents in this case? The Complainant alleges that, ". . . it cannot be contested that respondents 'held hostage' all of Mrs. Ataei's household goods from July, 1983, until September, 1984, (and the 4 bales of rugs thereafter to the present) unless and until the 'ransom' of \$65,000 was paid," and further that, "Judge Cooper's opinion establishes without question that the respondents withheld delivery of Mrs. Ataei's goods unless she paid them more than triple the amount Judge Cooper found owing." As has been noted, the Complainant argues that such action violates section 16 First of the Shipping Act, 1916, as well as sections 17 and 18(b)(3).

The pertinent holdings in the District Court case both as to the fact and law have been set forth in the Findings of Fact in this decision. They establish that the Cross-Complainants in that action (the Respondents here) were awarded damages and prejudgment interest. They had claimed damages of approximately \$64,318.74, which was broken down into seven categories.¹¹ The court allowed all of the damages, except the legal fees relating to the New York and Japan cases, which fees totalled \$42,727.43, of the \$64,318.74, so that the Complainant's description of the results of the District Court's opinion is accurate insofar as it goes. However, as the Findings of Fact and a fair and comprehensive reading of the decision itself indicate, the decision

¹¹ See Finding of Fact, Para. 11.

hardly stands for the proposition that the Complainant's goods were wrongly "held hostage" for treble damages.

First of all, the District Court opinion clearly holds that the costs claimed by the Respondents in the District Court action do not come within the purview of sections 1 and 18 of the Shipping Act, 1916 (FF, 14(a), (b)), so that the Complainant's argument that section 18(b)(3) of the Act has been violated because the Respondents' claim for such costs violates the terms of its tariff was rejected. Also, the Complainant's allegation that the "respondents charged, demanded, and attempted to collect and receive . . . a greater or different compensation for the transportation of Mrs. Ataei's property or for any service in connection therewith than the rates and charges which are specified in their tariff on file with this Commission and in effect at this time" (Complainant's Opening Brief, p. 3, filed Sept. 21, 1987) cannot stand in the face of the District Court holding that the Shipping Act's tariff provisions simply did not apply to the costs claimed by the Respondents.

Secondly, as to the Complainant's allegation that the Respondents' withholding delivery of the goods "constitutes a violation of section 16 First of the Shipping Act, 1916, 46 U.S.C. 815, in that the respondents subjected Mrs. Ataei to undue and unreasonable prejudice and disadvantage" (Complainant's Opening Brief, pp. 2, 3, filed Sept. 21, 1987), the District Court decision held that the respondents did not deviate unreasonably from the bill of lading and properly cared for the Complainant's goods over three years time. Further, that there was no negligence, fault or failure in the duties and obligations of the Respondents (Finding of Fact 14(c)(d)(e)). The District Court's

holding, and the facts supporting that holding, effectively precludes the Complainant's argument that there was any "unreasonable prejudice and disadvantage" in violation of section 16, First.

The same is true regarding the alleged violation of section 17, of the Shipping Act, 1916, where the Complainant alleges that, "respondents failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the handling, storing, and delivery of Mrs. Ataei's property." The District Court's holding clearly forestalls any collateral holding of unreasonable prejudice and disadvantage in the handling of the cargo involved here.

In addition to the specific holdings noted above there are other facets of the District Court opinion which reject the Complainant's allegation that the goods were wrongly being "held hostage" by the Respondents. As the Findings of Fact indicate, the reason for the delay in the transport of the household goods was in no way related to any transportation factors primarily attributable to the Respondents. Rather, the Complainant's son was accused of stealing the Persian rugs by a Bahrainian rug merchant who was either a former employer or associate, and this triggered action by the Bahrainian government which included possible criminal liability not only as to the Complainant's son but as to the Respondents as well. In the face of these facts and others set forth in the record the District Court's decision obviously resolved those facts and the issues evolving from them in the Respondents' favor. In addition to the specific holdings discussed above it found that the Respondents had a lien on the shipment for attorneys' fees and various costs, and in doing so rejected every argument made by the Complainant, including a Motion to Dismiss the Respondents'

Counterclaim District Court proceeding on the basis that it violated the Shipping Act of 1916. The Complainant seems to argue that since the District Court only enforced the lien respecting approximately a third of the costs claimed by the Respondents, there was a wrongful holding of the goods under the provisions of the Shipping Act, 1916, as to the remaining costs. One need only read the District Court's opinion to reject that view. The denial of Respondent's claims for legal fees in the New York and Japanese cases by the District Court was not predicated on any determination that the fees ought not to be awarded because they were excessive or frivolous or non-existent or because of any wrongdoing on the part of the Respondents. The Court's holding relating to the reasonableness and responsible behavior was in no way compromised in its holding as to the New York and Japanese legal fees. Rather, the denial of those fees was based on the Court's determination under COGSA, that paragraph 11 of the bill of lading does not allow for the recovery of legal fees unless the action is brought by "authorities or third parties." Specifically, the Court held that the complainant who brought the New York and Japanese actions was a consignee on the bill of lading and not a third party and that therefore, the Respondents could not recover legal fees in those cases. Both the Complainant and the Respondents are judicially bound by that decision, whether it is right or wrong, and they cannot relitigate it. Further, and more relevantly to the proceeding here, they cannot relitigate the factual determinations made in reaching that result. Those determinations cite the reasonableness of Respondents' actions and grant them liens on the cargo.

At this point it should be noted that while this decision invokes the doctrine of collateral estoppel against the Complainant, there is ample basis for applying the doctrine of res judicata, as the Complainant suggests. This decision has already noted that the Complainant's argument that the Respondents' counterclaims violated provisions of the Shipping Act was rejected by the District Court; that the Court expressly found the tariff provisions in the Shipping Act did not apply to the costs claimed by the Respondents; and that the Respondents were not liable to the Complainants for damages in delivery of the goods. All of these findings would support a holding of res judicata (claim preclusion) which would also preclude any arguments the Complainant could have but did not make in the District Court case. Even more compelling is the District Court's statement that because the Respondents' claimed costs were not required to be included in its tariff that:

. . . recovery for these expenses is properly covered in paragraphs 8 and 11 of the bill of lading, the contract of carriage (Ex. A) which deals with costs incident to the discharge and storage of cargo.³

³We disagree with plaintiff's contention that Rule 27(a) of defendants' tariff is applicable to the instant situation. That rule provides in relevant part:

Cargo Discharged At Other Than Bill of Lading Port

(A) Diversion made by Ocean Carrier

When the ocean carrier discharges cargo at a terminal port other than the port named in the ocean Bill of Lading, the ocean carrier may arrange at its option for movement via rail, truck or water of the shipment from the port of actual discharge only as indicated hereunder:-

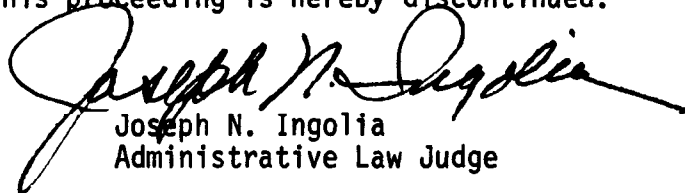
1) To ocean carrier's terminal at port of destination declared on the Bill of Lading at the expense of the ocean carrier.

As we read Rule 27, it applies when cargo is discharged at a port other than the one named in the bill of lading either because circumstances did not permit entry into the named port or because of error, and the cargo must therefore be transported to the correct destination by whatever means available.

In contrast, the goods herein were purposely unloaded in Yokohama although the vessel was going to Los Angeles, the port named in the bill of lading. The cargo was held up pending a determination whether to send it to Los Angeles or to return it to Bahrain as requested by that government. At the time the cargo was discharged in Japan, the carrier had no intention of arranging to move it to the port of destination.

Despite the support in the record for applying res judicata and the Complainant's urging that we do so generally, such a finding is not necessary here. In summary, this decision is in agreement with the parties that they may not relitigate the same matters that were litigated and determined in the District Court action, especially with the Complainant's contention that, "the only issues remaining to be litigated herein are the amount of reparations and attorneys fees to be awarded. . . ." She argues that they are in her favor, but, as we have found, the facts and the record in the District Court action support the Respondents' position, not the claims of the Complainant. Since the District Court found no wrongdoing, the Complainant can neither relitigate the issue of wrongdoing in terms of violations of the Shipping Act nor the question of reparations which necessarily arise from those violations.

In view of the above, this proceeding is hereby discontinued.


Joseph N. Ingolia
Administrative Law Judge

Washington, D.C.
November 25, 1987